

REMARKS

The final Office Action of March 16, 2010, and references applied therein, including those newly cited, have been carefully studied. Claims 1 and 3-10 are pending in the present application. The claims define patentable subject matter and should be allowed. Favorable reconsideration and allowance are respectfully requested.

Claim 1 has been amended to incorporated part of the subject matter of claim 4. The amendment is also support at least by Figs. 1-4 as originally filed. No new matter is added.

A new claim 10 has been added which corresponds to previous claim 6, but dependent on claim 4 and further incorporating the subject matter of previous claim 8. New claim 10 is patentable for the same reasons as the other claims, as pointed out in detail below.

Claims 1 and 3-9 have been rejected under 35 U.S.C. § 112, first paragraph, on the basis that the term “substantially perpendicular” in claim 1 is not in the original disclosure. This rejection is respectfully traversed.

First, the term “substantially” is at least implicitly disclosed, bearing in mind that the term “substantially” has been repeatedly interpreted as meaning “as close as possible.” It should be understood that in the real world it might be almost impossible to make a product in which two elements are exactly and precisely perpendicular to one another. Applicant believes that what is shown in the drawing is the elements being “substantially perpendicular” to one another, meaning as close to perpendicular as possible.

Nevertheless, with the understanding that “perpendicular” does not mean precisely at exactly 90 degrees, and in deference to the Examiner’s view, Applicant has amended claim 1 to remove the term “substantially”. The feature “said reservoir extends along a

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longitudinal axis substantially perpendicular to the longitudinal axis of the first body” is supported at least on page 4, line 18-26, of the specification. No new matter is added.

Withdrawal of the rejection is therefore respectfully requested.

Applicant understands that no other § 112 rejections exist, and applicant is proceeding in reliance thereof.

Claims 1 and 5-8 have been rejected in item 6 of the Office Action under 35 U.S.C. § 103(a) as being obvious from newly cited Knupp et al (U.S. 5,396,883, hereinafter “Knupp”) in view of previously applied Anderson et al (U.S. 6,065,472, hereinafter “Anderson”). Claims 3-4 and 9 have been rejected in item 7 of the Office Action under 35 U.S.C. §103(a) as being obvious from Knupp and Anderson as applied to claim 1 above, and further in view of newly cited Thompson (U.S. 3,732,864).

Because part of the subject matter of claim 4 has been incorporated into claim 1, the two rejections with respect to claims 1 and 4, as well as the dependent claims of claim 1, are respectfully traversed together.

First, Applicant respectfully submits that Knupp is not a relevant prior art because it relates to an extremely remote field of technology from that of the present application. *In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992). (The scope of the prior art only includes references that are “from the same field of endeavor, regardless of the problem addressed, [or] reasonably pertinent to the particular problem with which the inventor is involved.”). Knupp is not from the same field of endeavor of the present invention or reasonably pertinent to Applicant’s particular problem.

Knupp discloses a valve assembly for nebulizers to be used with **ventilators**. In column 1, lines 7-30, Knupp defines a nebulizer as a pneumatically, or electrically, powered device that nebulizes or atomizes medications and that is provided with a top opening through which the medication is delivered into a permanent inline tee. The tee connects the nebulizer with a ventilator circuit V in order to deliver the medication to the patients, who are ventilator dependent. Consequently, Knupp relates to a valve assembly which is aimed at permanent tube systems for ventilators and breathing apparatuses used in hospitals and clinics in order to aid patients who are not able to autonomously breathe. The Knupp nebulizer is not a hand held device in the control of the patient, and is not constructed to be easily manipulated by the user, an object of the present invention.

To the contrary, the claimed invention relates to an **inhaler**, which is a portable device based-held and controlled by the user, containing a dose of preparation in powder form which, when necessary, is inhaled by the user. The inhalers are not pneumatically or electrically powered by any machine, and, in order to use such an inhaler, it is necessary that the user is able to breathe and autonomously inhale.

As such, the technology fields of Knupp and the claimed invention are so different that one of ordinary skill in the Applicant's art would not have looked to Knupp for the necessary teachings stated in the Office Action. Consequently, it follows that the proposed combination of other references with Knupp would not have rendered the claimed invention obvious to one of ordinary skill in the art. *Id.*

Further, even if Knupp were relevant art of which the Applicant is charged knowledge, the proposed modification by Thompson would not have rendered Knupp satisfactory for its intended purpose. MPEP 2143.01(v).

Claim 1, as amended, requires that a through channel have a second outlet arranged on the outer surface of one end of the second body. On page 6, line 21, to page 7, line 5 of the Office Action, the rejection indicates that Knupp and Anderson do not disclose or teach this feature. However, the rejection also states that Thompson discloses this feature, and therefore would have rendered claim 1 obvious to one of ordinary skill in the art. Applicant respectfully disagrees.

The rejection interprets the first tube 20 of Knupp as the second body (item 6, page 3, of the Office Action), wherein the first tube 20 is connected with two hoses H at both end thereof (Fig. 1 of Knupp). Although in Fig. 1, Thompson discloses a channel 24 having both ends positioned on the outer surface of the right end of a body 18, the Thompson's channel 24 would have been inoperable for its intended purpose were it opened on the outer surface of Knupp's tube 20, because the hoses H of Knupp, sleeved over the ends of the tube 20, would have sealed both ends of the Thompson's channel 24. MPEP 2143.01(v). Such a combination, if at all possible, would make the reconstructed Knupp device inoperative, and such a combination therefore could not have obvious.

As such, the proposed combination of Knupp, Anderson, and Thompson does not make a *prima facie* case of obviousness against claim 1. Claims 3-9 are therefore also not obvious to the proposed combination at least by virtue of their dependency from claim 1 and inclusion of all features thereof. Withdrawal of the rejection is thus in order and respectfully requested.

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In view of the above amendment and remarks, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejections of record. Applicant submits that the application is in condition for allowance and early notice to this effect is most earnestly solicited.

If the Examiner has any questions or suggestions, he is invited to contact the undersigned at 202-628-5197.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant(s)

By 

Sheridan Neimark
Registration No. 20,520

SN:HL
Telephone No.: (202) 628-5197
Facsimile No.: (202) 737-3528
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